

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:02-CR-131-BO
No. 5:11-CV-642-BO

MICHAEL EUGENE FARMER)
Petitioner,)
v.) ORDER
UNITED STATES OF AMERICA)
Respondent.)

This matter came before the undersigned for re-sentencing following the Court's allowance of Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. In his motion, Mr. Farmer contended that he was no longer a career offender in light of *United States v. Simmons*, 649 F.3d. 237 (4th Cir. 2011) (en banc).

Mr. Farmer's relief is now foreclosed by the Fourth Circuit's recent holding that the rule announced in *Carachuri-Rosendo v. Holder*, ___ U.S. ___, 130 S.Ct. 2577 (2010), is procedural and is not retroactively applicable to cases on collateral review. *United States v. Powell*, No. 11-6152, 2012 WL 3553630 *5 (4th Cir. August 20, 2012). Mr. Farmer's Motion to Vacate is therefore untimely and must be dismissed pursuant to 28 U.S.C. § 2255(f)(3). Whether this circuit will honor the application of *Powell* in this context is a matter left to be determined.

SO ORDERED, this 22 day of August, 2012.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE